

115TH CONGRESS  
2D SESSION

# S. 3197

To amend the Internal Revenue Code of 1986 to promote retirement savings on behalf of small business employees by making improvements to SIMPLE retirement accounts and easing the transition from a SIMPLE plan to a 401(k) plan, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 11, 2018

Ms. COLLINS (for herself and Mr. WARNER) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to promote retirement savings on behalf of small business employees by making improvements to SIMPLE retirement accounts and easing the transition from a SIMPLE plan to a 401(k) plan, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “SIMPLE Plan Mod-  
5 ernization Act”.

1 **SEC. 2. CONTRIBUTION LIMIT FOR SIMPLE IRAS.**

2 (a) IN GENERAL.—Subparagraph (E) of section  
3 408(p)(2) of the Internal Revenue Code of 1986 is amend-  
4 ed—

5 (1) by striking “amount is” and all that follows  
6 in clause (i) and inserting “dollar amount is—

7 “(I) \$15,500 in the case of an el-  
8 igible employer described in clause  
9 (iii) which had not more than 25 em-  
10 ployees who received at least \$5,000  
11 of compensation from the employer  
12 for the preceding year,

13 “(II) \$15,500 in the case of an  
14 eligible employer described in clause  
15 (iii) which is not described in sub-  
16 clause (I) and which elects, at such  
17 time and in such manner as pre-  
18 scribed by the Secretary, the applica-  
19 tion of this subclause for the year,  
20 and

21 “(III) \$10,000 in any other  
22 case.”,

23 (2) by striking “ADJUSTMENT.—In the case of”  
24 in clause (ii) and inserting “ADJUSTMENT.—

25 “(I) CERTAIN LARGE EMPLOY-  
26 ERS.—In the case of”,

1           (3) by striking “clause (i)” in clause (ii) and in-  
2           serting “clause (i)(III)”, and

3           (4) by adding at the end of clause (ii) the fol-  
4           lowing new subclause:

5                           “(II) OTHER EMPLOYERS.—In  
6                           the case of a year beginning after De-  
7                           cember 31, 2019, the Secretary shall  
8                           adjust annually the \$15,500 amount  
9                           in subclauses (I) and (II) of clause (i)  
10                          in the manner provided under sub-  
11                          clause (I) of this clause, except that  
12                          the base period taken into account  
13                          shall be the calendar quarter begin-  
14                          ning July 1, 2018.”.

15           (b) CATCH-UP CONTRIBUTIONS.—Paragraph (2) of  
16           section 414(v) of the Internal Revenue Code of 1986 is  
17           amended—

18                          (1) in subparagraph (B)—

19                                 (A) by striking “the applicable” in clause  
20                                 (ii) and inserting “except as provided in clause  
21                                 (iii), the applicable”, and

22                                 (B) by adding at the end the following new  
23                                 clause:

24   “(iii) In the case of an applicable em-  
25   ployer plan—

1 “(I) which is maintained by an  
2 eligible employer described in section  
3 408(p)(2)(E)(i)(I), or

4 “(II) to which an election under  
5 section 408(p)(2)(E)(i)(II) applies for  
6 the year (including a plan described in  
7 section 401(k)(11) which is main-  
8 tained by an eligible employer de-  
9 scribed in section 408(p)(2)(E)(i)(II)  
10 and to which such election applies by  
11 reason of subparagraphs (B)(i)(I) and  
12 (E) of section 401(k)(11)),

13 the applicable dollar amount is \$4,500.”,

14 and

15 (2) in subparagraph (C)—

16 (A) by striking “ADJUSTMENT.—In the  
17 case of” and inserting “ADJUSTMENT.—

18 “(i) IN GENERAL.—In the case of”,

19 and

20 (B) by adding at the end the following new  
21 clause:

22 “(ii) AMOUNT WITH RESPECT TO  
23 SMALL AND ELECTING EMPLOYERS.—In  
24 the case of a year beginning after Decem-  
25 ber 31, 2019, the Secretary shall adjust



1           (3) by striking “3 percent” each place it ap-  
2           pears in subclauses (II) and (III) and inserting “the  
3           applicable percentage”.

4           (d) INCREASE IN NONELECTIVE EMPLOYER CON-  
5           TRIBUTION FOR ELECTING LARGER EMPLOYERS.—Sub-  
6           paragraph (B) of section 408(p)(2) of the Internal Rev-  
7           enue Code of 1986 is amended by adding at the end the  
8           following new clause:

9                           “(iii) SPECIAL RULE FOR ELECTING  
10                           LARGER EMPLOYERS.—In the case of an  
11                           employer which had more than 25 employ-  
12                           ees who received at least \$5,000 of com-  
13                           pensation from the employer for the pre-  
14                           ceding year, and which makes the election  
15                           under subparagraph (E)(i)(II) for any  
16                           year, clause (i) shall be applied for such  
17                           year by substituting ‘3 percent’ for ‘2 per-  
18                           cent’.”.

19           (e) TRANSITION RULE.—Paragraph (2) of section  
20           408(p) of the Internal Revenue Code of 1986 is amended  
21           by adding at the end the following new subparagraph:

22                           “(F) 2-YEAR GRACE PERIOD.—An eligible  
23                           employer which had not more than 25 employ-  
24                           ees who received at least \$5,000 of compensa-  
25                           tion from the employer for 1 or more years, and

1           which has more than 25 such employees for any  
2           subsequent year, shall be treated for purposes  
3           of subparagraph (E)(i) as having 25 such em-  
4           ployees for the 2 years following the last year  
5           the employer had not more than 25 such em-  
6           ployees, and not as having made the election  
7           under subparagraph (E)(i)(II) for such 2 years.  
8           Rules similar to the second sentence of sub-  
9           paragraph (C)(i)(II) shall apply for purposes of  
10          this subparagraph.”.

11          (f) AMENDMENTS APPLY ONLY IF EMPLOYER HAS  
12 NOT HAD ANOTHER PLAN WITHIN 3 YEARS.—Subpara-  
13 graph (E) of section 408(p)(2) of the Internal Revenue  
14 Code of 1986, as amended by subsection (a), is amended  
15 by adding at the end the following new clause:

16                   “(iii) EMPLOYER HAS NOT HAD AN-  
17                   OTHER PLAN WITHIN 3 YEARS.—An eligi-  
18                   ble employer is described in this clause  
19                   only if, during the 3-taxable-year period  
20                   immediately preceding the 1st year the em-  
21                   ployer maintains the qualified salary re-  
22                   duction arrangement under this paragraph,  
23                   neither the employer nor any member of  
24                   any controlled group including the em-  
25                   ployer (or any predecessor of either) estab-

1           lished or maintained any plan described in  
 2           clause (i), (ii), or (iv) of section  
 3           219(g)(5)(A) with respect to which con-  
 4           tributions were made, or benefits were ac-  
 5           crued, for substantially the same employees  
 6           as are eligible to participate in such quali-  
 7           fied salary reduction arrangement.”.

8           (g) CONFORMING AMENDMENTS RELATING TO SIM-  
 9    PLE 401(k)s.—

10           (1) Subclause (I) of section 401(k)(11)(B)(i) of  
 11           the Internal Revenue Code of 1986 is amended by  
 12           inserting “(after the application of any election  
 13           under section 408(p)(2)(E)(i)(II))” before the  
 14           comma.

15           (2) Paragraph (11) of section 401(k) of such  
 16           Code is amended by adding at the end the following  
 17           new subparagraph:

18           “(E) EMPLOYERS ELECTING INCREASED  
 19           CONTRIBUTIONS.—In the case of an employer  
 20           which applies an election under section  
 21           408(p)(2)(E)(i)(II) for purposes of the con-  
 22           tribution requirements of this paragraph under  
 23           subparagraph (B)(i)(I), rules similar to the  
 24           rules of subparagraphs (B)(iii), (C)(ii)(IV), and  
 25           (F) of section 408(p)(2) shall apply for pur-



1           poses of subparagraphs (B)(i)(II) and (B)(ii) of  
2           this paragraph.”.

3           (h) PLAN FORMS TO BE SHARED WITH SEC-  
4   RETARY.—Subsection (p) of section 408 of the Internal  
5   Revenue Code of 1986 is amended by adding at the end  
6   the following new paragraph:

7           “(11) PLAN ARRANGEMENT AND NOTICES TO  
8   BE SHARED WITH SECRETARY.—The trustee or  
9   issuer (in the case of an individual retirement annu-  
10   ity) of a simple retirement account shall provide to  
11   the Secretary, at the time the qualified salary reduc-  
12   tion arrangement is established (or not later than  
13   December 31, 2019, in the case of arrangements in  
14   effect on the date of the enactment of this para-  
15   graph), a copy of the written arrangement described  
16   in paragraph (2)(A).”.

17          (i) EFFECTIVE DATE.—The amendments made by  
18   this section shall apply to taxable years beginning after  
19   December 31, 2018.

20          (j) REPORTS BY SECRETARY.—

21           (1) IN GENERAL.—The Secretary of the Treas-  
22   ury shall, not later than December 31, 2019, and  
23   annually thereafter, report to the Committees on Fi-  
24   nance and Health, Education, Labor, and Pensions  
25   of the Senate and the Committees on Ways and

1 Means and Education and the Workforce of the  
2 House of Representatives on the data described in  
3 paragraph (2), together with any recommendations  
4 the Secretary deems appropriate.

5 (2) DATA DESCRIBED.—For purposes of the re-  
6 port required under paragraph (1), the Secretary of  
7 the Treasury shall collect data and information on—

8 (A) the number of plans described in sec-  
9 tion 408(p) or 401(k)(11) of the Internal Rev-  
10 enue Code of 1986 that are maintained or es-  
11 tablished during a year,

12 (B) the number of participants eligible to  
13 participate in such plans for such year,

14 (C) median contribution amounts for the  
15 participants described in subparagraph (B),

16 (D) the types of investments that are most  
17 common under such plans, and

18 (E) the fee levels charged in connection  
19 with the maintenance of accounts under such  
20 plans.

21 Such data and information shall be collected sepa-  
22 rately for each type of plan. For purposes of col-  
23 lecting such data, the Secretary of the Treasury may  
24 use such data as is otherwise available to the Sec-  
25 retary for publication and may use such approaches

1 as are appropriate under the circumstances, includ-  
2 ing the use of voluntary surveys and collaboration on  
3 studies.

4 **SEC. 3. EMPLOYERS ALLOWED TO REPLACE SIMPLE RE-**  
5 **TIREMENT ACCOUNTS WITH SAFE HARBOR**  
6 **401(k) PLANS DURING A YEAR.**

7 (a) IN GENERAL.—Section 408(p) of the Internal  
8 Revenue Code of 1986, as amended by section 2, is  
9 amended by adding at the end the following new para-  
10 graph:

11 “(12) REPLACEMENT OF SIMPLE RETIREMENT  
12 ACCOUNTS WITH SAFE HARBOR PLANS DURING PLAN  
13 YEAR.—

14 “(A) IN GENERAL.—Subject to the re-  
15 quirements of this paragraph, an employer may  
16 elect (in such form and manner as the Sec-  
17 retary may prescribe) at any time during a year  
18 to terminate the qualified salary reduction ar-  
19 rangement under paragraph (2), but only if the  
20 employer establishes and maintains (as of the  
21 day after the termination date) a safe harbor  
22 plan to replace the terminated arrangement.

23 “(B) COMBINED LIMITS ON CONTRIBU-  
24 TIONS.—The terminated arrangement and safe  
25 harbor plan shall both be treated as violating

1 the requirements of paragraph (2)(A)(ii) or sec-  
2 tion 401(a)(30) (whichever is applicable) if the  
3 aggregate elective contributions of the employee  
4 under the terminated arrangement during its  
5 last plan year and under the safe harbor plan  
6 during its transition year exceed the sum of—

7 “(i) the applicable dollar amount for  
8 such arrangement (determined on a full-  
9 year basis) under this subsection (after the  
10 application of section 414(v)) with respect  
11 to the employee for such last plan year  
12 multiplied by a fraction equal to the num-  
13 ber of days in such plan year divided by  
14 365, and

15 “(ii) the applicable dollar amount (as  
16 so determined) under section 402(g)(1) for  
17 such safe harbor plan on such elective con-  
18 tributions during the transition year multi-  
19 plied by a fraction equal to the number of  
20 days in such transition year divided by  
21 365.

22 “(C) TRANSITION YEAR.—For purposes of  
23 this paragraph, the transition year is the period  
24 beginning after the termination date and ending

1 on the last day of the calendar year during  
2 which the termination occurs.

3 “(D) SAFE HARBOR PLAN.—For purposes  
4 of this paragraph, the term ‘safe harbor plan’  
5 means a qualified cash or deferred arrangement  
6 which meets the requirements of paragraph  
7 (11), (12), or (13) of section 401(k).”.

8 (b) WAIVER OF 2-YEAR WITHDRAWAL LIMITATION  
9 IN CASE OF PLANS CONVERTING TO 401(k) OR 403(b).—

10 (1) IN GENERAL.—Paragraph (6) of section  
11 72(t) of the Internal Revenue Code of 1986 is  
12 amended—

13 (A) by striking “ACCOUNTS.—In the case  
14 of” and inserting “**ACCOUNTS.**—

15 “(A) IN GENERAL.—In the case of”, and

16 (B) by adding at the end the following new  
17 subparagraph:

18 “(B) WAIVER IN CASE OF PLAN CONVER-  
19 SION TO 401(k) OR 403(b).—In the case of an  
20 employee of an employer which terminates the  
21 qualified salary reduction arrangement of the  
22 employer under section 408(p) and establishes  
23 a qualified cash or deferred arrangement de-  
24 scribed in section 401(k) or purchases annuity  
25 contracts described in section 403(b), subpara-

1 graph (A) shall not apply to any amount which  
2 is paid in a rollover contribution described in  
3 section 408(d)(3) into a qualified trust under  
4 section 401(k) (but only if such contribution is  
5 subsequently subject to the rules of section  
6 401(k)(2)(B)) or an annuity contract described  
7 in section 403(b) (but only if such contribution  
8 is subsequently subject to the rules of section  
9 403(b)(11)) for the benefit of the employee.”.

10 (2) CONFORMING AMENDMENT.—Subparagraph  
11 (G) of section 408(d)(3) of such Code is amended by  
12 striking “72(t)(6)” and inserting “72(t)(6)(A)”.

13 (c) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to plan years beginning after De-  
15 cember 31, 2018.

○